

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DARRYL CLARK,

Petitioner,

vs.

ROBERT LEGRAND, *et al.*,

Respondents.

3:13-cv-00369-LRH-VPC

ORDER

This action is a *pro se* petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254, by a Nevada state prisoner.

By order filed September 26, 2013, this Court granted petitioner's motion to proceed *in forma pauperis*. (ECF No. 3). Because it appeared likely that the petition was filed well outside the AEDPA one-year limitations period, the Court ordered petitioner to demonstrate either that he submitted his federal habeas corpus petition in a timely manner, or that he is entitled to equitable tolling of the one-year limitations period imposed by the AEDPA. (*Id.*). On October 4, 2013, petitioner filed a response in which he asks the Court to waive the AEDPA statute of limitations. (ECF No. 5). Petitioner further asks the Court to limit its review to Ground 4 of the petition, in which petitioner alleges actual innocence. (*Id.*).

1 Petitioner challenges a 1987 criminal conviction in the Eighth Judicial District Court, in
2 Clark County, Nevada. The Antiterrorism and Effective Death Penalty Act (AEDPA) imposes a
3 one-year statute of limitations on the filing of federal habeas corpus petitions. Specifically, and in
4 pertinent part, the statute reads:

5 (d)(1) A 1-year period of limitation shall apply to an application for
6 a writ of habeas corpus by a person in custody pursuant to the
7 judgment of a State court. The limitation period shall run from the
8 latest of—

9 (A) the date on which the judgment became
10 final by the conclusion of direct review or the
11 expiration of the time for seeking such review;

12 (B) the date on which the impediment to filing
13 an application created by State action in
14 violation of the Constitution or laws of the
15 United States is removed, if the applicant was
16 prevented from filing by such State action;

17 (C) the date on which the constitutional right
18 asserted was initially recognized by the
19 Supreme Court, if the right has been newly
20 recognized by the Supreme Court and made
21 retroactively applicable to cases on collateral
22 review; or

23 (D) the date on which the factual predicate of
24 the claim or claims presented could have been
25 discovered through the exercise of due
26 diligence.

28 U.S.C. § 2244(d)(1).

19 According to the petition, petitioner was convicted on September 30, 1987. Petitioner signed
20 his federal habeas petition and dispatched it for mailing on July 5, 2013. The petition was filed well
21 outside the AEDPA one-year limitations period, a fact that petitioner does not dispute. Petitioner's
22 sole argument is his reference to an actual innocence argument at Ground 4 of the petition. The
23 Court has reviewed Ground 4 of the petition, in which petitioner argues: "Although petitioner pled
24 guilty to the offense 'sexual assault with use of a deadly weapon,' he did not pled guilty to two
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1 additional sentences [for] ‘use of a deadly weapon.’” (Petition, ECF No. 1-1, at p. 11). Petitioner
2 argues that a fact-finder never determined how the deadly weapon was used at the time of the
3 offense. (*Id.*). Petitioner’s argument lacks merit. Petitioner admits in the petition that he pled guilty
4 to “sexual assault with the use of a deadly weapon.” Petitioner cannot now assert that he did not
5 agree to serve the sentence for use of a deadly weapon. Because Ground Four of the petition does
6 not establish that petitioner is entitled to equitable tolling, and because the petition was filed well
7 outside the AEDPA statute of limitations, this action is dismissed with prejudice.

8 **IT IS THEREFORE ORDERED** that the petition for a writ of habeas corpus is **DENIED**
9 **WITH PREJUDICE** as untimely.

10 **IT IS FURTHER ORDERED** that the Clerk of Court shall enter judgment accordingly.

11 Dated this 22nd day of October, 2013.

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14 UNITED STATES DISTRICT JUDGE